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INTERVIEW

On kitsch, zombies and true love – an interview with Martti Koskenniemi

DANA SCHMALZ — 21 May, 2014



Listening to him doesn't get boring. [Martti Koskenniemi](#) is one of the great critical minds in contemporary scholarship of international law, and when he talks, no stone is left on the other. He emphatically criticizes the “kitsch” of notions such as obligations erga omnes, international community or human rights. Yet, what he demands is not resignation but commitment. After four days of his [Masterclass](#) on “Critical Studies of International Law” at the [Max Planck Institute](#) for Comparative Public and International Law in Heidelberg, Martti Koskenniemi was still energetic and ready for an interview:

When and why did you decide to become an international lawyer?

I suppose because I was one of those kids who wanted to rule the world. I was always politically oriented, too. So, it was natural for me to go to law school, because I thought that lawyers rule the world – what a mistake. Then after law school, the choice of the diplomatic school was natural. I of course assumed that diplomats rule the world, yet another rather silly prejudice born in part of one-sided attention to the operation of public institutions such as the United Nations. I wasn't attached to law, or international law, at that stage in any specific way.

Within in your career as a diplomat and as a law professor, have there been key moments – moments of great enthusiasm or great disappointment?

Many moments of enthusiasm. I tend to get enthusiastic about almost anything (laughs). I really liked working in multilateral treaty contexts. I started out as an international environmental lawyer, being present when the UN Environment Programme began to work on now long-forgotten declarations on offshore mining and drilling, on land-based pollution – and I was very enthusiastic about that. Later, one of the first drafts of the Vienna Convention on Protection of the Ozone layer came from my typewriter. And then, when Finland was in the UN Security Council in 1989–1990, I was appointed legal counsel to the delegation. This was the time of the first Iraq war, and – although it sounds stupid to say – I was also enthusiastic of those dramatic and tragic events. What struck me especially was that everybody was so interested in international law suddenly. I mean how to interpret Chapter 7 of the UN Charter – Articles 39, 40, 41, 42,

47 and so on? As international lawyer I found myself as authority in all of that. I found it really puzzling as to why the political leaders would think that the law of the UN Charter had any meaning in a large political and military crisis. But everybody talked endlessly about international law. Enthusiasm struck me also when I returned from the UN in 1991 and was appointed Finland's counsel in the Great Belt Case before the ICJ. I was asked to set aside everything else for 12 months. Suddenly, I was terribly keen about ship sizes, bridges, vertical clearances – all things of which five minutes earlier I knew nothing and had no real interest in.

These were moments of great professional enthusiasm, and I have to say that I haven't had similar moments in the academy. So I do miss that a little. And the kind of friendships, which evolve, when you sit together in some (in the end perhaps rather meaningless) UN meeting, and as a diplomat you want to get some paragraph in the text to be negotiated. If, finally, late at night, you succeed, then you go and have a beer with your like-minded colleagues and celebrate. Of course, very soon thereafter, you forget about it. The paragraph did not change the world. Why did you fight over it so intensely? But in multilateral diplomacy, those are moments of great professional intensity and friendship. I do not think I have ever experienced such at the university – though, of course, there are other kinds of rewards in academic work.

But I should also mention the early moment of the so-called "new approaches to international law", at the tail end of the critical legal studies movement in the early 1990s. We had a couple of really weird seminars in the United States, sit-in events, moments of performing the law and drinking a lot of wine, having endless conversations in various experimental formats. Certainly, it was also a question of age. But those kind

of institutional moments have their time, they don't appear just randomly. In my age-group, the middle of the 90s provided a good moment for such. The feminist movement as well as the beginning of poststructuralism and postcolonialism, the Third World activists and others, I think we all shared a sense of beginning to have some influence – that was great fun.

Turning to critical legal theory: In your doctoral thesis “From Apology to Utopia”, which was published in 1989, you argue that law doesn't determine the solution of concrete cases. Rights can always be advanced for either side. If we accept this indeterminacy thesis, what does it change for our profession as international lawyers?

We cannot commit to law, that is the most important thing, that committing to law is meaningless. But things follow: if we no longer can commit to law – what is it that we can then commit to? That is of course a very difficult and important personal question. We commit to our families, we commit perhaps to our nation, to ideas, socialism, liberalism, we may commit to people. We might commit to other international lawyers, because we think what they do is great. But we cannot commit to law as the abstract language of international legality. That would be meaningless. We need to know what it is that law does in some specific situation, and only then it may become clear whether we should support or oppose it. Or whether we should simply ignore it.

And what does this perspective change for teaching (international) law?

We should have a much more reflective view on the actual operation of the law: it is certainly only a part, perhaps a

minor part of our teaching to look at the instruments and the institutions of the law. More of what we need to teach and learn is how to govern, what government means, what purposes it has been and may be used for. As lawyers, we should have a clear view of the exercise of authority over human beings in different contexts, and our own role in those contexts. Duncan Kennedy's point about legal education being "training in the exercise of hierarchy" is as valid today as it ever was. If you get into a position where you exercise authority over others, you have to try to be a certain kind of person, who is sensitive, who is able to make use of law as an instrument for good purposes.

Concerning the future of international law, you said that we are there on very thin ice, and below us is deep water. Could you rephrase what you mean by this description?

The present institutions in international law are very fragile and often without much effect for the "real world". In addition, it may sometimes be the case that the very having of those institutions becomes a problem – it may make us unable to see the world that lies behind them. I mean, that the institutions become a kind of smokescreen. We are happy if a declaration has been passed, a committee report has been produced, a judgment has been delivered. Whether they also contribute to changing the lives of human beings remains often invisible – surprisingly often we do not even ask that question. Public international law arose as a gentle civilizing set of institutions and practices at the end of the 19th century but had expended much of its inspirational and political force by the 1960s. I sometimes think that some of its institutions are today like zombies – dead, but not knowing that they are dead, they simply do not lay down and disappear. Is there a future for international law? I do not know. I think there is future for

trade law, human rights law, maybe environmental law... But the generalist institutions – such as the International Law Commission for example – I do not know. It would not matter much for anybody if they simply stopped their endless meetings. I suppose this is just another description for fragmentation, the sense that the center has collapsed.

Taking up the field of human rights law: A journal article of yours from 2001 begins with the sentence “human rights are like love – both necessary and impossible”. So we need human rights, but we ought to be careful?

We ought to be careful, and we ought to be aware that what is advanced under the name of human rights are always also particular political opinions and projects. Many institutions engaged in human rights work are simply bureaucratic instances that seek accommodation with the status quo. Human rights are like love, I have written, because I do think we need something like them, the inexplicable, yet firm grasp they have on our imagination and commitment. They are like love because we cannot reason about them without losing their emotional hold on us. There lies also their vulnerability, especially in a society that is conflictual and constantly looks for justifying reasons. Like the language of love, also the vocabulary of human rights may become just a set of empty phrases, a manner of speaking, the invocation of nostalgia for some (real or imagined) moment in the past. Of course, speaking about human rights can be so comforting – but the language of love, too, may express only romantic sentimentalism.

You drew on the notion of kitsch to criticize the over-affirmative and sometimes unreflecting use of certain concepts in international legal scholarship. Today, some

aspects of your own scholarship have become very popular and we see many Koskenniemi-followers. Are notions such as the indeterminacy thesis themselves at risk to become kitsch?

(Laughs) Yes, there is that danger, of course. There has been a kitschification already, I think, of some of that stuff. We are not masters of what we write, we just do the best we can, and then others use those tropes that we think we have invented, but which actually have come to us also from somewhere else. But the kitschification of things is a natural process, there is not so much we can do about it. We can live with it, we don't have to admire it, not everything can or should occupy what the heart authentically desires. We also need normality, and safety. When Kundera wrote, in the Unbearable Lightness of Being, that "the brotherhood of man on earth is possible only on the basis of kitsch" I think he wanted to say that if we cannot love everybody we can at least pretend we do. That is not so bad and at least it is much better than what goes on in the name of, say, authentic commitment to some grand, though ultimately racist or supremacist cause. Kitsch is light, and we often need lightness.

In 2005, you published a 2nd Edition of "From Apology to Utopia", adding an Epilogue, which dealt with questions and critique that had come up, but which was also speaking about the way the world had changed since 1989. If you were to publish a 3rd Edition today, 9 years later, what would you write in a new Epilogue?

That's a good question, and I do realize that the situation now is different from 9 years ago. The Epilogue was written mostly for didactic reasons, in order to give a methodologically and logically organized introduction to the work. I have a big

desire to communicate complicated topics in a simple form. But the world is not the same, and I would today probably pay more attention to the way financial and economic actors operate and to the way those operations interact with the projects of public actors. I would try to describe a couple of new dichotomies related to financial structures. How that would be done, I don't know. But if I had to write a new Epilogue today, I would take the financial crisis and try to say something about how to think about dichotomies of the political and the economy in that respect.

More generally, what are the topics of the future in international law? What are the areas, in which we need to get active?

Everything connected to the Global South. That is where the emphasis has to lie. This comes with many subsidiary problems: one concerns the distribution of resources, between the North and the South, but perhaps equally within the South itself. The corruption of the elites is a big problem. Then we have climate change. The report of the Intergovernmental Panel on Climate Change having come out, it is very clear that we do live in a tragedy. In 2050, the world will be hit very dramatically by the effects of climate change, and this will have a particularly severe effect on the Global South. So, economic and environmental issues in the South must be the main concerns.

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3 Comments



AZIN TADJINI

21 May, 2014 at 18:36 – Reply

Great interview! Koskenniemi is full of interesting ideas. There is one particular idea in this interview, however, that I find problematic and that I think we as lawyers and individuals should not easily accept. It's the following: "But we cannot commit to law as the abstract language of international legality. That would be meaningless. We need to know what it is that law does in some specific situation, and only then it may become clear whether we should support or oppose it. Or whether we should simply ignore it."

I think this idea is problematic, because the viability of law and the ideal of law as a way of governing society,

requires commitment. If we disagree with its content, we have a responsibility to try to change it. We cannot, as Koskenniemi says, “simply ignore it”. Therefore, even in the abstract language of international legality, law requires commitment.



CRISTINA VERONES

25 May, 2014 at 15:26 – Reply

I think to “ignore international law” in some specific situations is simply realistic and in my opinion Koskenniemi’s statement is quite true in this regard.

It might seem shocking to international lawyers, but the statement reflects a simple truth: (international) law cannot solve all the problems. There might be some specific economic/social/political (...) problems that cannot be solved by the application of international legal rules. This is not to say that (international) law should not be applied and is useless – quite to the contrary. But what it means is that international lawyers need to recognize the limits of what (international) law can do. Only if we accept these limits can we properly apply it. If we try to apply it in situations where (international) law is not useful, this will only result in disillusionment with what international law can do. And in my opinion, this is far more harmful to the “cause of international law” than “ignoring it” in some instances. So yes, I think in some specific cases international law and international legality might better be ignored.





KITCH

24 May, 2014 at 23:26 – Reply

“(Laughs) Yes, there is that danger, of course. There has been a kitschifikation already, I think, of some of that stuff.”

<http://memecogens.tumblr.com/post/83704098171/our-civilizer-which-art-in-helsinki-hallowed-be>

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